

PRE-APPEAL BRIEF REQUEST FOR REVIEW

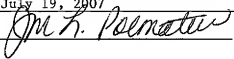
Docket Number (Optional)

DOW-31780

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on July 19, 2007

Signature

Typed or printed name Jere L. Polmatier

Application Number

10/690,680

Filed

10/22/2003

First Named Inventor

Aaron Seung-Joon Rhee et al.

Art Unit

1732

Examiner

Matthew J. Daniels

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

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applicant/inventor.

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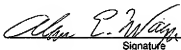
assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record. 45188
Registration number

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attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34



Alan E. Wagner

Typed or printed name

414-273-2100

Telephone number

July 19, 2007

Date

NOTE: Signatures of all the Inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

Attorney Docket No. DOW-31780

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

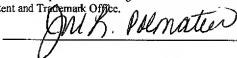
In re Application of : Aaron Seung-Joon Rhee et al.
Serial No. : 10/690,680
Filing Date : October 22, 2003
For : Method to Improve The Performance of Film Products
Confirmation No. : 6141
Group Art Unit : 1732
Examiner : Matthew J. Daniels
Customer No. : DOW-31780

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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M/S AFTER FINAL

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P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

COMMENTS

These Comments accompany the Pre-Appeal Brief Request for Review filed concurrently with the Notice of Appeal for this case.

The issues on this Appeal are:

- 1) Whether Claim 3 is indefinite under 35 USC §112, second paragraph;
- 2) Whether Claims 1 and 3-7 are unpatentable as anticipated by or obvious over McKinney (US 4,430,289);
- 3) Whether Claim 8 is unpatentable as obvious over McKinney in view of Ealer (US 4,594,213); and,
- 4) Whether Claims 1 and 3-7 are unpatentable as obvious over Matteodo (US 5,132,344).

Since the Amendment filed June 19, 2007 was not entered, Claims 1 and 3-8 remain in this application as shown in the attached Exhibit.

Issue 1

Claims 3 is rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicants believe that the Examiner's error is failure to enter the amendment of Claim 3 that was filed on June 19, 2007. Such amendment should have been entered on the grounds of reducing the issues on appeal.

Issues 2 and 3

Claims 1 and 3-7 are rejected under 35 USC 102(b) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over McKinney. Claim 8, which depends from Claim 5, is rejected under 35 USC 103(a) as being unpatentable over McKinney in view of Ealer. The Applicants traversed these rejections on the grounds that McKinney does not inherently disclose the method of the current claims but, rather, teaches away from the current invention.

With respect to inherency, the Examiner has failed to show that the undisclosed element must be present in McKinney.

'The law requires that inherency may not be established by possibilities or probabilities. The evidence must show that the inherency is necessary and inevitable.' *Interchemical Corp. v. Watson*, 111 USPQ 78, 79(d) (D.C. 1956), *aff'd*, 116 USPQ 119 (D.C. Cir. 1958); MPEP §2112.

The current claims are to a method for improving the cling force of a stretch wrap film. In contrast to the Examiner's position, McKinney does not disclose, even inherently, a method to improve the cling force of a stretch film. Instead, McKinney teaches a method to decrease the cling force of a film. Notably, the tables in Examples 2 and 3 of McKinney show that the addition of the additives decreases the cling force of the films, as measured by

film-to-film slip angle. Accordingly, McKinney explicitly shows that their method does not “necessarily and inevitably” improve the cling angle. As such, McKinney does not anticipate or render obvious the subject matter of the current claims.

Even more, McKinney actually teaches away from the current invention. Specifically, a reference that teaches a method to decrease cling force clearly teaches away from a method to improve cling force. Therefore, the anticipation and obviousness rejections based on McKinney should be overturned.

Issue 4

Claims 1 and 3-7 are rejected under 35 USC 103(a) as obvious over Matteodo, US Patent 5,132,344.

With regards to Matteodo (US Pat. No. 5,132,344), it teaches many types of polyethylene (see col. 2, lines 63-64) including linear low density polyethylene. It requires zinc oxide, but says it should be present in an amount in a range of from 100 to less than 2,000 ppm (see col. 2, line 35), and should have a particle size of from 0.05 to 2.0 μm , preferably from 0.1 to 2.0 μm (see col. 3, line 33). Matteodo also teaches that its compositions can be thermoformed, which includes film forming processes (see column 5, lines 23-29), although stretch wrap film is not specifically mentioned.

Matteodo fails to provide any teaching relevant to a method for improving the cling force of a stretch wrap film, much less the method as currently claimed. While some of the ranges of particular elements in Matteodo may overlap with ranges claimed in the present invention there is no teaching of the specific combination of elements claimed. In particular, there is no teaching of the combination of a small amount of zinc oxide having a small average diameter particle size. In order to arrive at an example meeting the claims of the present invention from Matteodo, it would be necessary to pick specific materials and end use applications from Matteodo's broad teachings and choose ranges of particle size and amounts

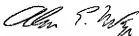
which are at the extreme of the ranges taught by Matteodo, and at least for the case of particle size, outside the preferred range. It is important to note that none of the Examples of Matteodo fall within the scope of the present invention, due to using a zinc oxide with a mean diameter size of 0.5 μm (see col. 6, line 9), and in amounts greater than 100 ppm. Thus there is no novelty destroying point contained in the Examples. As there is no novelty destroying point in the Examples, and no teaching of the specific combination of elements claimed in the present invention, Matteodo is relevant only for a discussion of obviousness.

In terms of obviousness, there is no indication why a person of ordinary skill in the art, considering Matteodo, would choose to select the particular combination of elements claimed in the present invention. First as to particle size, at column 3, line 33, Matteodo teaches away from using the smaller materials included in its broadest range (0.5 μm to 2 μm), indicating that the larger particles (0.1 μm to 2 μm) are more preferred. Secondly, as to the amount, it is notable that at column 8, line 67, Matteodo states that using less than 100 ppm is actually worse than using none at all. Clearly this teaches away from the lower amounts now claimed by the Applicants.

The results presented in the present application demonstrate surprising results achieved when using the amounts and size of the zinc oxide particles with LLDPE. In particular Table 4, (including both 4.1 and 4.2) demonstrates that using ultra fine zinc oxide at low levels increases the cling force of stretch wrap films while maintaining other

properties, including successful neutralization of acid in the resin (see Table 1). These results are unexpected, and are in no way suggested by Matteodo.

Respectfully submitted,



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Dated: July 19, 2007

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